



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 30, 2004

Re: Order Requiring Installation of Measuring Devices

Dear Water User:

The Idaho Department of Water Resources (Department) has issued the enclosed preliminary order requiring installation and maintenance of acceptable measuring devices on ground water diversions that inject water into the Big Lost River through the Eastside and Island canal system and redivert water from the Big Lost River at the Arco or Munsey diversion. The records of the Department and Water District 34 indicate that you own or operate one or more of these diversions. This order requires the installation and maintenance of a measuring device at each of the wells. Measuring devices at the points of rediversion from the Big Lost River are maintained by the Big Lost River Irrigation District.

Pursuant to Section 67-5234, Idaho Code, the preliminary order will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet. A copy of the order and this letter is being sent to those users identified in Attachment A of the order.

Guidelines regarding acceptable measuring devices can be obtained from the Department web site at http://www.idwr.state.id.us/water/districts/water_measurement.htm. Measuring devices will be calibrated by Water District 34 or Department staff. The installed measuring devices must read within 10% of the standard meter to be considered acceptable.

If you have questions regarding this order, please contact the Watermaster at 208-588-3137, or contact Jennifer Berkey at 208-327-7871.

Sincerely,

Tim Luke
Water Distribution Section

cc: Mailing List
Robert Duke, Watermaster
IDWR Eastern Region
Big Lost River Irrigation District

Enclosure

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF REQUIRING MEASURING)	
DEVICES ON GROUND WATER DIVERSIONS,)	PRELIMINARY
INJECTED INTO THE BIG LOST RIVER AT THE)	ORDER
EASTSIDE CANAL RETURN AND REDIVERTED)	
AT THE ARCO OR MUNSEY DIVERSION)	
_____)	

On August 14, 2003, the Watermaster of Water District 34 requested that the Idaho Department of Water Resources (Department) order the installation and maintenance of measuring devices on groundwater diversions that inject water into the Big Lost River through the Eastside and Island canal system for redirection into the Arco or Munsey diversion. Measuring devices at the points of redirection from the Big Lost River are maintained by the Big Lost River Irrigation District, however, accurate measurements of the flow contributed by each individual well are necessary for the Watermaster to distribute the appropriate amount of water to the Arco and Munsey diversions. The Department visited the groundwater points of diversion with the Watermaster on October 23, 2003 and found that adequate measuring devices did not exist on some of these diversions.

Section 42-701, Idaho Code, provides in pertinent part as follows:

**42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS
AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON
FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF
DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT
PROCEDURE -- REPORT FILING FEE.**

1. The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

....

3. Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

4. The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

....

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. Those water users identified in Attachment A of this order shall install and maintain measuring devices of a type acceptable to the Department prior to diverting ground water for injection into and redirection from the Big Lost River during the 2004 irrigation season. This order requires the installation and maintenance of a measuring device at each well that is a point of diversion for one of the following water rights:

34-02401A	34-07055	34-07205
34-02480A	34-07075	34-07234
34-04015	34-07100	34-10163
34-07028A	34-07176	34-10923
34-07037	34-07181	34-12368
34-07052		

2. The watermaster shall shut off any diversion that does not have an acceptable measuring device and refuse to deliver water for redirection from the Big Lost River.

DATED this 29th day of January, 2004.


L. GLEN SAXTON, P.E.
ADMINISTRATOR
WATER MANAGEMENT DIVISION

Attachment A

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 10th day of February 2004, the above PRELIMINARY ORDER was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid and properly addressed as follows:

Darrell McDonald
2310 W. US HWY 93
Arco, ID 83213

A handwritten signature in cursive script, appearing to read 'Crystal Calais', written over a horizontal line.

Crystal Calais, Administrative Assistant I
Water Distribution Section

ATTACHMENT A

CERTIFICATE OF SERVICE

The attached order dated January 29, 2004 was sent to the following individuals at the addresses noted on **January 30th, 2004.**

Ralph Parkinson
Parkinson Farms
2195 N. 3000 W.
Arco, ID 83213

Leon and Marlene Folkman
P.O. Box 823
Arco, ID 83213

Sunset Trust Organization
C/o Arthur W. Quist Mgr
Rt 1 Box 203
Arco, ID 83213

Charles and Fern Isom
3199 W. 2200 N.
Arco, ID 83213

DeAnn and Jay Jensen
Rt 1 Box 112A
Moore, ID 83255

Richard Potter
80 N. 300 E.
Malad, ID 83252

Larry A. Quist
Rt 1. Box 203
Arco, ID 83213

Larry and Sherry Rasmussen
1779 E. HWY 101
Logan, UT 84321

Douglas and Lore Schureman
3059 W. 2230 N
Arco, ID 83213

Eleanor and Spencer Toone
585 Lilac Street
Blackfoot, ID 83221

Ethan Ford
2419 South Daniels Road
Herber City, UT 84032

Darrell Lee and Toni McDonald
P.O. Box 246
Arco, ID 83213

Please make a COS & mail
a copy of this order to:
Darrell McDonald
2310 W US Hwy 93
Arco ID 83213
2/10/04 sent to

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.